IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

SECOND APPEAL NO.1130 OF 2005

Shri Ananda Maruti Pokharnikar .. ..Appellant

versus

Shri Bhimrao Babasaheb Mali & Anr. ..Respondents

Mr.Appasaheb Desai with A.P.Kulkarni for appellant

Mr.A.M.Kulkarni for respondent no.1

CORAM : A.M.KHANWILKAR,J.

DATE : 8TH FEBRUARY, 2006.

P.C.:

1. Heard counsel for the parties.

2. Two contentions are raised before this court. The first argument is that the courts below have committed error in answering the issue of legal necessity to dispose of the suit property against the appellant. The second

point urged before this court is that the suit agreement has not been proved on record. In so far as the first contention is concerned, whether the transaction was for legal necessity is a question of fact, it is not even a question of law muchless substantial question of law.

3. In so far as second point is concerned, the issue as framed before the lower court on the basis of pleadings of the rival parties was whether the appellant (Defendant No.1) has proved that suit agreement was got executed by practicing fraud. So far as that issue is concerned, the courts below have considered the same and answered the issue against the appellant. The court below has found that the appellant has conceded the fact of execution of agreement for sale. It is not possible for this court to take a different view in the matter.

4. Suffice it to observe that no substantial question of law arises for consideration, hence the appeal is dismissed.

5. In view of this order nothing survives in Civil Application, the same is also dismissed.